IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6120 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS & LEGAL REPRESENTATIVES OF DECD. KASUMBIBEN NARANDAS

Versus

STATE OF GUJARAT

Appearance:

MR DK ACHARYA for Petitioner No. 1-1/2

MR DIPEN DESAI, Ld. AGP for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 23/12/2004

ORAL JUDGEMENT

1. Rule. Mr.Desai, learned Counsel waives service of rule on behalf of the respondents. With the consent of the parties the matter is taken up for final hearing today.

2. The short facts of the case are that the petitioners are occupying a cabin over the land admeasuring 8 x 10 ft. It is the case of the petitioners

that the land was granted to the predecessor in title of the petitioners as per the Kabulat, which is produced at Annexure "D". It is further case of the petitioners that as the predecessor in title of the petitioners namely; Vithaldas Rameshkumar was sick he was in need of money and, therefore, without getting permission the cabin was sold by him for the consideration of Rs.30,500/= and the petitioners have purchased the same in the year 1991. It appears that thereafter the District Collector, Banaskantha initiated proceedings for the breach of condition and before the District Collector it was submitted, inter alia, that because of the financial crisis the cabin was sold, however, the transaction may be regularised and the petitioners are ready to pay necessary charges. It appears that thereafter on 16.1.1998 the District Collector, Palanpur, found that without permission the transaction has taken place and, therefore, the grant of the land shall stand cancelled and the order is passed for eviction and for resuming the land back. The petitioners carried the matter before the State Government in revision and the State Government also found that there is breach of condition and, therefore, no case is made out for interference and ultimately the revision is dismissed and it is under these circumstances the petitioners have approached this Court by preferring this petition.

3. Heard Mr.Acharya, learned Counsel for the petitioners and Mr.Desai, learned AGP for the respondents.

4. Upon hearing the learned Counsel for the parties, it appears that there is no dispute on the point that the land was granted for commercial purpose to the predecessor in title of the petitioners or original grantee, Vithaldas Rameshkumar, who had also made cabin over the land . It is the case of the petitioners that the cabin in question is situated in the queue and the possession of 42 cabinwalas, who are located in queue is regularised, but only the petitioners' case is not considered.

5. Mr.Desai, learned Counsel admits the said position that it is only the case of the petitioners which is not considered but the possession of other cabin holders are regularised. It further appears that the case of the petitioners is that it is on account of the sickness of Mr.Vithaldas Rameshkumar, original grantee as he was in financial crisis and as a result thereof he was compelled to dispose of the cabin with land to the petitioners and the petitioners have purchased under such

circumstances. It is also the case of the petitioners that the petitioners have additionally spent an amount of around Rs.25,000/= over the property and the petitioners are ready to pay the necessary charges for the purpose of regularisation of the transaction, may be by premium or otherwise.

6. It appears that the application was made by the original grantee for permission to sell on 17.11.1994 and even if the petitioners have purchased the cabin prior that too, the application is made for the first time on 17.11.1994 and, therefore, the market value of the property which may be required to be considered would be as that of17.11.1994, even if the lenient view is taken on account of the sickness of the original grantee and the compelling circumstances for such purpose. Further, it is an admitted position that permission was not obtained at the time when the transaction took place and even till today no payment is made towards the premium which otherwise would have been payable had the permission been granted by the District Collector, except the amount of Rs.10,000/= which has been deposited by the petitioners with the District Collector pursuant to the interim order passed by this Court. Therefore, even if the matter is considered for regularising the transaction, in addition to the valuation of the property on the date when the application was made, the petitioners should also pay reasonable interest which in any case will not be less than 10% per annum on the basis of the valuation of the property as on 17.11.1994.

7. It appears that the District Collector as we as the State Government while exercising the revisional jurisdiction have only proceeded on the basis that as the permission is not obtained, the transaction is entered into without permission and, therefore, there is a breach of condition and, therefore, the decision is taken to resume back the land and also to evict the petitioners from the property in question.

8. Considering the peculiar facts and circumstances, as referred to hereinabove namely; that the original grantee had to dispose of the land on account of his sickness and consequent financial constrains and that the possession of all the shop holders in the queue are regularised and that the petitioners have spent the amount of about Rs.25,000/= and that the petitioners have shown willingness to pay the amount with reasonable rate of interest even before this Court through their Counsel, I find that it would be just and proper to direct the District Collector to consider the matter for

regularisation of the transaction for purchase of the cabin by the petitioners. As and when the matter is considered once again by the District Collector in view of the observations made hereinabove, it would be open to the District Collector to assess the valuation of the property as on 17.11.1994 and to ascertain the amount of premium which may be required to be paid had the permission been granted by him for transfer and it would also be open for him to recover additional amount of reasonable rate of interest, in any case not less than 10% per annum on the amount of such premium and if the petitioners pay the amount, the matter deserves to be considered sympathetically by the District Collector for regularisation of such transaction.

9. Under the above circumstances, I find that the following directions shall meet with the ends of justice:

1) The petitioners shall make appropriate application to the District Collector, Banaskantha for regularisation of the transaction on the basis of the application dated 17.11.1994 within a period of one month from today.

2) The District Collector shall examine the matter in light of the observations made hereinabove and shall give one month's time to the petitioners to pay the amount as may be decided by him in the said application. It is made clear that the amount of Rs.10,000/= deposited by the petitioners in pursuance of interim order in this petition will be given set off.

3) After the amount is paid by the petitioners appropriate consequential order shall be passed by the District Collector for regularisation of the transaction in accordance with law. Until the aforesaid procedure is undertaken, status-quo qua the property in question shall be maintained.

It is made clear that the present order is passed considering the peculiar facts and circumstances of the case referred to hereinabove and this order shall not be treated as precedent in future.

10. The petition is disposed of in terms of the aforesaid directions. Rule made absolute accordingly. There shall be no order as to costs. Direct service is permitted.

23.12.2004 (Jayant Patel, J.)

vinod